IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21501 of 2014
Date of Decision: 19.09.2018

Jagat Singh and others ...Petitioners

Vs.

State of Haryana and others ...Respondents

2. CWP No. 1846 of 2015

Sajjan Kumar and another ...Petitioners

Vs.

State of Haryana and others ...Respondents

3. CWP No. 1587 of 2015

Shanti Devi and another ...Petitioners

Vs.

State of Haryana and others ...Respondents

4. CWP No. 5987 of 2016

Hari Om ...Petitioner

Vs.

The State of Haryana and others ...Respondents

5. CWP No. 13126 of 2017

Mahender Singh and others ...Petitioners

Vs.

The State of Haryana and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. B.K. Bagri, Advocate for the petitioners.
Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. *(Oral)*

1. This order will dispose of all the five cases captioned above as they can conveniently be decided by a common order, dispute being

common.

2. The petitioners retired from service and were re-employed on different dates. They claim that during re-employment they have been inadequately paid. They rely on the notification dated 26.04.2011 issued by the Haryana Government, Education Department. Clause 8 of the notification guarantees to the petitioners that salary will be paid as per provisions of Punjab Civil Service Rules, Volume II i.e. last pay drawn minus pension.

3. The State has filed written statement in these cases and contest the claim of the petitioners urging that Rule 7.18 explains with reference to Rule 2.45 of the Punjab Civil Services Rules, Volume I, Part I, as applicable to Haryana that the term "pension" except when used in contradistinction to gratuity, includes "gratuity". There can, therefore, be no doubt that the pension equivalent of the gratuity which a Government servant receives on retirement under the New Pension Scheme (NPS) should be taken into account for the purpose of determining his pay during re-employment. Note 5 continues to explain as to how monthly of the lump sum gratuity is to be reckoned, the pension equivalent of the gratuity which a government servant received on retirement under the New Pension Scheme should be determined by applying the current Table of Commutation of Pension, the age of the person concerned being taken as the age next birth-day after retirement from government service. Note 5 provides flesh to Rule 7.18 which is

the basic rule and is reproduced as below:

> *"The retirement gratuity admissible under the revised pension rules (vide Appendix 1) is in lieu of a portion of the pension admissible under the old rules. It will be noticed that in the the case of Government servants who opt for the benefits of the modified pension rules (under para 9(i) (c) of rules contained in Appendix 1) the pension including additional pension, under the rules applicable before the introduction of the new scheme, is to be reduced by the pension equivalent of the gratuity admissible under the new pension rules, and the Government servant is allowed to receive in lieu of this reduction the death-cum-retirement gratuity. The new scheme was not intended to liberalize the provision relating to the fixation of pay of pensioners on re-employment as contained in this rule, or any other executive orders of Government issued from time to time. Under Rule 2.45 of the Punjab Civil Services Rules, Volume I, Part I, as applicable to Haryana that the term "pension" except when used in contradistinction to gratuity, includes "gratuity". There can, therefore, be no doubt that the pension equivalent of the gratuity which a Government servant receives on retirement under the New Pension Scheme (NPS) should be taken into account for the purpose of*

determining his pay during re-employment. Note 5 continues to explain as to how monthly of the lump sum gratuity is to be reckoned, the pension equivalent of the gratuity which a government servant received on retirement under the New Pension Scheme should be determined by applying the current Table of Commutation of Pension, the age of the person concerned being taken as the age next birth-day after retirement from government service."

4. Accordingly, the expression 'last pay drawn minus pension' of the notification is read in the light of the Note 5 to Rule 7.18 of the Rules. Besides, the Haryana Civil Service Pension Rules 2016 have been adverted to by the State.

5. The petitioners superannuated prior to 01.01.2016 i.e. before the Haryana Civil Service Pension Rules 2016 came into force. Their cases have to be governed by the old law. It may be noticed that with the new rules the position has changed as provided in rule 8 (15) which prescribes the formula of working out Pension Equivalent to Gratuity (PEG) with which we are not concerned for the present.

6. Mr. Saravjit Sharma, Section Officer in the respondent/Department is present in Court today and has explained the real position. In case some employees during re-employment have been given benefit larger than what they deserves by mistake, that will not give away right to the petitioners to claim parity of treatment as that

would not perpetuate the illegality. The writ Court would refrain from passing an order invoking promise of Article 14 of the Constitution of India in such two aberrations in the application of Rules. I find no error in the payment of salary during re-employment.

7. For the above reasons, I find no merit in this petition and order it to stand dismissed. If any benefit which has been given to any of the petitioners for no fault of theirs, then recovery may not be made in view of the law laid down in State of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334.

(RAJIV NARAIN RAINA)
JUDGE

19.09.2018
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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*